

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

In re:

WAREHOUSE 86, LLC

Debtor

CASE NO. 08-03423-EE
Chapter 11

**NOTICE OF MOTION OF WAREHOUSE 86, LLC
FOR AUTHORITY TO PAY INSURANCE PROCEEDS
FOR "PROPERTY OF OTHERS" TO OWNER OF PROPERTY**

PLEASE TAKE NOTICE that Warehouse 86, LLC (the “Debtor”) has filed with the United States Bankruptcy Court a *Motion for Authority to Pay Insurance Proceeds for “Property of Others” to Owner of Property* (the “Motion”) [Dkt. # 254]. By the Motion, the Debtor seeks the authority to pay the \$10,000.00 proceeds of the Property-of-Others Check for “Property of Others” to Eric Eilertsen, or to such party or parties as the court may direct. A copy of the Motion is attached to this Notice as Exhibit “A,” and copy of the Motion and this Notice is being sent to each party listed on the mailing matrix maintained by the Clerk of the Bankruptcy Court.

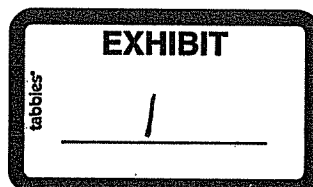
NOTICE IS FURTHER GIVEN that any objection to the Motion must be in writing and filed with the Clerk of the United States Bankruptcy Court, Post Office Box 2448, Jackson, MS 39225-2448 or, if delivered, to Room 101, 100 East Capitol Street, Jackson, MS 39201 on or before 21 days from the date of this Notice, and a copy shall be served upon the Debtor's attorney, Stephen W. Rosenblatt, Butler, Snow, O'Mara, Stevens & Cannada, PLLC, Post Office Box 6010, Ridgeland, MS 39158-6010, and upon the United States Trustee, 100 West Capitol Street, Suite 706, Jackson, MS 39269.

NOTICE IS FURTHER GIVEN that in the event no written objection or other responsive pleading is timely filed, the Motion may be determined ex parte by the Court.

Dated: August 30, 2010.

s/ Stephen W. Rosenblatt

Stephen W. Rosenblatt (MS Bar No. 5676)
ATTORNEY FOR DEBTOR



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Document Page 2 of 2

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

In re:

WAREHOUSE 86, LLC

Debtor

**CASE NO. 08-03423-EE
Chapter 11**

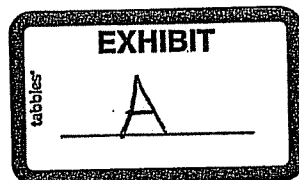
**MOTION OF WAREHOUSE 86, LLC FOR AUTHORITY
TO PAY INSURANCE PROCEEDS FOR "PROPERTY OF OTHERS"
TO OWNER OF PROPERTY**

Warehouse 86, LLC, the Debtor and Debtor-in-Possession herein ("Debtor"), by its attorneys, files this *Motion for Authority to Pay Insurance Proceeds for "Property of Others" to Owner of Property* (the "Motion"). In support of the Motion, the Debtor presents to the Court the following:

Introduction

1. On November 4, 2008 (the "Petition Date"), Debtor filed its Voluntary Petition in this bankruptcy case (the "Bankruptcy Case") under Chapter 11 of the Title 11 United States Code (the "Bankruptcy Code"). Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, Debtor is continuing to manage its assets as Debtor in possession. No trustee or examiner has been appointed in this Bankruptcy Case.

2. An Official Committee of Unsecured Creditors (the "Committee") was appointed in this Bankruptcy Case on November 19, 2008 [Dkt. # 062].



Jurisdiction and Venue

3. This Court has jurisdiction over this matter pursuant to 28 U. S. C. §§ 157 and 1334. Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409. This matter is governed by Rule 2002(a)(3) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Background

4. Prior to February 5, 2008, Debtor operated an on-line auction business. The Debtor leased corporate office and warehouse in Southaven, Mississippi at 481 Airport Industrial Drive, Southaven, Mississippi (the “Location”).

5. The Debtor occupied the Location under that certain Sublease with SCK, Inc., f/k/a S.C. Kiosks, Inc. (“SCK”).

6. The Debtor was the named insured in that certain commercial property insurance policy numbered 3A2-22-78-08, issued by Employers Mutual Casualty Insurance Company with effective dates from April 15, 2007 to April 15, 2008 (the “Policy”). In accordance with its obligations under the Sublease, SCK also was a named “loss payee” in the Policy with respect to the Location with respect to “Covered Property.”

7. The Policy had a \$1,000,000 per occurrence loss limit for personal property loss, but it also have a separate per occurrence loss limit of \$50,000 for business income loss, a \$10,000 per occurrence loss limit for debris removal, a \$25,000 per occurrence loss limit for extra expenses, and a \$10,000 per occurrence loss limit for property of others.

8. On or about February 5, 2008, the Debtor’s corporate offices and its primary warehouse and distribution center at the Location were damaged by a tornado. In addition to damage to the building at the Location, the Debtor suffered losses for its owned inventory at the Location and for cleanup and repair expenses related to its inventory, as well as for its personal

property, such as its conveyor and racking system, other business personal property, business supplies, and for debris removal. In addition, the Debtor incurred covered losses for business income loss, as well as for extra expenses and claims preparations. In addition to the property owned by the Debtor that was damaged by the tornado, SCK had leased certain conveyors and racking to the Debtor, and a portion of that equipment also was damaged by the tornado. All of these losses suffered by the Debtor were covered under the Policy (collectively, the "Tornado Loss").

9. On or about February 11, 2008, during cleanup operations from the tornado, the Location was further damaged by a fire. In addition to damage to the building at the Location, the Debtor suffered losses for its owned inventory at the Location, as well as for its personal property such as its betterments and improvements and the conveyor and racking system, and for debris removal. In addition, the Debtor incurred business income loss. In addition to the property owned by the Debtor that was damaged by the fire, SCK had leased certain conveyors and racking to the Debtor, and a portion of that equipment also was damaged by the fire. All of these losses suffered by the Debtor were covered under the Policy (collectively, the "Fire Loss").

10. Following extensive negotiations with EMC, the Debtor secured a settlement of claims for the Tornado Loss and for the Fire Loss for close to the limits of liability of the Policy. EMC has tendered the total amount of \$2,099,882.35 (the "Insurance Proceeds") in four checks made payable to Debtor and SCK, as follows:

Date	Payees	Check Number	Amount
07/23/2009	Warehouse 86, LLC and SC Kiosks, Inc.	H03305822	\$1,060,000.00
08/12/2009	Warehouse 86, LLC and SC Kiosks, Inc.	H03306059	\$979,882.35
08/12/2009	Warehouse 86, LLC and SC Kiosks, Inc.	H03306060	\$50,000.00
07/22/2009	Warehouse 86, LLC	H03305808	\$10,000.00
Total			\$2,099,882.35

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11. Of the Insurance Proceeds totaling \$1,060,000.00 represented by Check Number H03305822 for the fire loss, the subcategories and sub-policy limits under which the payments were made were as follows:

- (A) \$1,000,000.00 – payments for personal property losses (policy limits);
- (B) \$50,000 – payments of the sublimits for Business Income loss and Extra Expenses (sub-policy limits); and
- (C) \$10,000.00 – payment for debris removal (sub-policy limits).

12. Of the Insurance Proceeds represented by Check Numbers H03306059 (\$979,882.35) and H03306060 (\$50,000.00) for the tornado loss, the subcategories and sub-policy limits under which the payments were made were as follows:

- (A) \$979,882.35 – payments for all personal property losses (check number H03306059); and
- (B) \$50,000 – payment of the sublimit for Business Income loss (check number H033060600

13. The Insurance Proceeds described in paragraphs 12 and 13 above were endorsed by both the Debtor and SCK and were deposited into the registry of the Court on August 26, 2009 pending determination by the Court of the extent to which each party is entitled to those funds. *See Order Approving Joint Motion of Warehouse 86 LLC and SCK, Inc f/k/a Kiosks, Inc for authority to deposit Insurance proceeds into the registry of the court in contemplation of the filing of a Complaint for Declaratory Judgment*, entered on August 26, 2009 [Dkt. # 184] and the receipts filed by the deputy clerk of the Bankruptcy Court on August 26, 2009 reflecting such deposits.

14. On November 2, 2009, SCK and RadioShack Corporation filed a Complaint for Declaratory Judgment against Warehouse 86, LLC in this Bankruptcy Case, Adversary Proceeding No. 09-00139 [Dkt. # 197] to determine the rights to the Insurance Proceeds listed above, and that matter is now pending in the Bankruptcy Court. On December 1, 2009, the Debtor filed its Answer and Defenses to the Complaint [Dkt. # 205]. A mediation was conducted before Honorable David W. Houston III on August 24, 2010.

15. In addition to the Insurance Proceeds represented by Check Numbers H03305822, H03306059 and H03306060, the Debtor also received Insurance Proceeds represented by Check Number H03305808, in the amount of \$10,000.00 (the "Property-of-Others Check") , a copy of which is attached hereto as Exhibit "B."

16. The \$10,000 Property-of-Others Check was the amount of the sub-policy limits for "property of others," which was a payment for the personal property of Eric Eilertsen ("Eilertsen") that was located in the office of the Debtor at the Location that was destroyed. Eilertsen is a former equity interest holder in and a member of the Debtor. The \$10,000 Property-of-Others Check was endorsed by the Debtor and deposited into the Debtor's account pending authorization by Order of the Court to disburse it.

17. The Property-of-Others Check was made payable only to the Debtor because SCK had no interest in the "property of others." "Property of Others" is defined in the Insurance Policy as follows:

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“A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this Section, A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

...

c. **Personal Property Of Others** that is:

- (1) In your care, custody or control; and
- (2) Located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.”

18. Although other equity members of the Debtor had some personal property at the Location that was destroyed, Eilertsen owned the vast majority of the “property of others.” The total value of the “Property of Others” was far in excess of the \$10,000 sub-limits of the Insurance Policy. Furthermore, the other persons who had their own personal property at the Location have agreed to allow Eilertsen to receive the entire proceeds of the \$10,000 Property-of-Others Check paid by the Insurance Company.

19. The Debtor, therefore, requests that it be authorized to disburse to Eilertsen the proceeds of the \$10,000 Property-of-Others Check for the insurance proceeds for the “Property of Others,” or to such other party or parties as the Court may direct.

WHEREFORE, the Debtor requests that the Court authorize the Debtor to pay the \$10,000.00 proceeds of the Property-of-Others Check for “Property of Others” to Eric Eilertsen,

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or to such party or parties as the Court may direct. Warehouse 86, LLC further prays for such other general or other special relief to which, in equity, it might be entitled.

Dated: August 26, 2010.

Respectfully submitted,

WAREHOUSE 86, LLC

By: s/Stephen W. Rosenblatt

STEPHEN W. ROSENBLATT (Miss. Bar # 5676)

PAUL M. ELLIS (Miss. Bar # 102259)

Its Attorneys

CERTIFICATE OF SERVICE

I, Stephen W. Rosenblatt, certify that I have this date served, via electronic filing transmission or United States mail, postage prepaid, a true and correct copy of the above and foregoing to the following:

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Document Page 8 of 8

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bthomas@abcthomas.com

Dated: August 26, 2010.

s/ Stephen W. Rosenblatt
STEPHEN W. ROSENBLATT

Jackson 5441480v1

Label Matrix for local noticing
0538-3
Case 08-03423-ee
Southern District of Mississippi
Jackson Divisional Office
Mon Aug 30 14:01:01 CDT 2010

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Salt Lake City, UT 84121-5952

Tennessee Dept of Revenue
c/o TN Attorney General Office
Bankruptcy Division
P O Box 20207
Nashville, TN 37202-4015

ABC Logistics Corp
2300 Sitler St #685
Memphis, TN 38114-4801

AIG Bankruptcy Collections
Michelle A. Levitt, Authorized Represent
70 Pine Street, 28th Floor
New York NY 10270-0002

Allied Waste Serv #493
48 Landfill Rd
Leland MS 38756-9721

American Covers, Inc.
dba Handstands
675 West 14600 South
Bluffdale, UT 84065-4831

American Intematl Co.
Specialty Workers Comp
P O Box 409
Parsippany, NJ 07054-0409

Aon Innov. Solutions
13922 Denver West Pkwy
Golden CO 80401-3142

Atmos Energy
P.O. Box 9001949
Louisville KY 40290-1949

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King & Spencer
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Porsche Financial Services
c/o Larry Spencer
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5680 New Northside Dr.
Atlanta, GA 30328-4668

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Atlanta, GA 30348-5262

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Dallas, TX 75265-0448

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Phoenix, AZ 85038-9010

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2602 MARINA DR
ELKHART IN 46514-8642

Mississippi State Tax Commission, Legal Divi
P.O. Box 22828
Jackson, MS 39225-2828

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307 International Circle, Ste 270
Hunt Valley, MD 21030-1322

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100 East Capitol St.
P.O. Box 2448
Jackson, MS 39225-2448

ADP, Inc.
One ADP Blvd
Roseland, NJ 07068-1786

Air-One Services
5055 Pleasant View
Memphis, TN 38134-6308

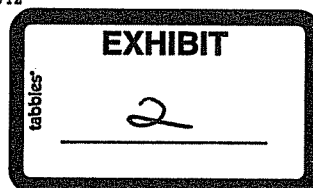
Allied Waste Serv #868
48 Landfill Rd.
Leland MS 38756-9721

American Express Travel Related Svcs Co
Inc Corp Card
c/o Becket and Lee LLP
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Malvern PA 19355-0701

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545 W 12 Street
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Deer Park NY 11729-5717

Crawford Technical Servs.
Joel Fisher, Exe Gen Adj
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Diamondhead, MS 39525-4129

Crown Lift Trucks
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Bld. #5
Memphis, TN 38118-7042

Crown Packaging Corp.
17854 Chesterfield Airport
Chesterfield, MO 63005-1216

DHL Express (USA) Inc.
P O Box 4723
Houston, TX 77210-4723

DHL Express-Clains
Attn: Mark Sanchez
1144 W. Washington St.
Tempe, AZ 85281-1200

DHL Express-SRC
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MS 2061-DI 1
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RadioShack Corporation
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Essex Junction
Essex Junction, VT 05452-3038

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Horn Lake MS 38637-1445

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Fort Worth, TX 76102-1901

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TWG Innov. Solutions
f/k/a Aon Innov Solutions
Attn: VP Operations, Lisa Schizas,
13922 Denver West Pkwy
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TWG Innovative Solutions Inc
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100 w Capitol St., Ste 706
Jackson MS 39269-1607

UNITED PARCEL SERVICE
C/O RMS Bankruptcy Recovery Services
P.O. Box 5126
Timonium, Maryland 21094-5126

UPS
1620 Valwood Pkwy #115
Carrollton, TX 75006-8321

UPS
Lockbox 577
Carol Stream, IL 60132-0001

UPS Freight
P.O. Box 6109
Westerville, OH 43086-6109

Utah State Tax Commission
210 N 1950 W
Salt Lake City, UT 84134-9000

Verizon Wireless
P O Box 660108
Dallas, TX 75266-0108

Verizon Wireless
P O Box 3397
Bloomington IL 61702-3397

Vertex, IPS
5885 Stapleton Dr. N
STE C308
Denver, CO 80216-3311

Warehouse 86, LLC
5 River Bend Place, Ste D
Flowood, MS 39232-7618

Warehouse 86, LLC
c/o Christopher R. Maddux
P O Box 6010
Ridgeland MS 39158-6010

Waterford Technologies
19700 Fairchild #300
Irvine, CA 92612-2515

Weber County Assessor
P O Box 9700
Ogden, UT 84409-0700

Weber County Treasurer
2380 Washington Blvd
Ogden UT 84401-1475

Willow Lake Pro., LLC
233 South Wacker Dr
Ste. 350
Chicago, IL 60606-6405

Windsor Tax Services
P.O. Box 1655
Windsor, ON N9A767

Christopher R. Maddux
Butler Snow O'Mara Stevens & Cannad
PO Box 6010
Ridgeland, MS 39158-6010

John A. Crawford Jr
Butler, Snow, O'mara, Stevens & Cana
P. O. Drawer 22567
Jackson, MS 39225-2567

Paul Calhoun
Haddox Reid Burkes & Calhoun, PLLC
210 E Capitol Street
Suite 1100
Jackson, MS 39201-2380

R. Michael Bolen
100 W. Capitol St.
Suite 706
Jackson, MS 39269-1607

Stephen W. Rosenblatt
Butler Snow O'Mara Stevens & Cannada
P.O. Box 6010
Ridgeland, MS 39158-6010

Stuart M. Irby
c/o Richard Montague
P.O. Box 1970
Jackson, MS 39215-1970

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

IRS
100 W Capitol St., Ste 504
Jackson MS 39269-0599

MS State Tax Commission
Bankruptcy Section
P O Box 23338
Jackson MS 39225-3338

(d)Mississippi State Tax Commission
P O Box 1033
Jackson, MS 39215-1033

(d)Mississippi State Tax Commission
c/o Heather S Deaton
P O Box 22828
Jackson MS 39225

Rocky Mountain Power
1033 NE 6th Ave
Portland, OR 97256-0001

Addresses marked (c) above for the following entity/entities were corrected as required by the USPS Locatable Address Conversion System (LACS).

Audiovox Spec. Applic.
53200 Marina Drive
Elkhart, W 46514

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)RadioShack Corporation and SCK, Inc. f/k/a

(u)CH Enterprises
4829 S. Ridgeline Drive
RETURNED MAIL 5-5-10

(d)Eric L. Eilertsen
1878 Laurel Ln.
Germantown TN 38139-6954

(u)Jennifer D. Jones
10 1 Warren St., #20
RETURNED MAIL 11/17/2008

(d)Tennessee Dept of Revenue
c/o Attorney General
P O Box 20207
Nashville TN 37202-4015

(d)Keith Martin Mack
2949 Los Robles Rd
Thousand Oaks, CA 91362-3320

End of Label Matrix
Mailable recipients 160
Bypassed recipients 6
Total 166